

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JUNE 19, 2012

AMENDED IN SENATE MAY 21, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 956

Introduced by Senator Lieu

(Coauthor: Senator Correa)

(Coauthors: Assembly Members Alejo and Wieckowski)

January 9, 2012

An act to add Chapter 1b (commencing with Section 18500) to Division 8 of the Business and Professions Code, and to amend Section 22054 of the Financial Code, relating to automobile sellers and lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 956, as amended, Lieu. Buy-here-pay-here automobile sellers and lenders.

(1) Existing law prohibits a person from acting as a dealer in vehicles, as specified, without a license issued by the Department of Motor Vehicles. Existing law governs conditional sale contracts, as defined, for the purchase of motor vehicles, including the enforceability of those contracts. Existing law also governs lease contracts, as defined, for the lease of motor vehicles, including the enforceability of those contracts. Existing law, the California Finance Lenders Law, the violation of which is a crime, provides for the licensure and regulation of finance

lenders by the Commissioner of Corporations, but exempts from its provisions a bona fide conditional contract of sale involving the disposition of personal property when that form of agreement is not used for the purpose of evading provisions of that law.

This bill would enact the Buy-Here-Pay-Here Automobile Dealers Act. The bill would define a “buy-here-pay-here automobile dealer” as a seller who enters into conditional sale contracts, as defined, or lease contracts, as defined, does not routinely assign those contracts to an unaffiliated third-party finance or leasing source, and collects payments on or otherwise services those contracts. The bill would exclude from this definition automobile sellers who meet specified requirements. This bill would require those dealers to obtain a finance lender license and subject them to specified other provisions of the California Finance Lenders Law. The bill would also define a “buyer-borrower” as a person who enters into a conditional sale contract or lease contract with a buy-here-pay-here automobile dealer. The bill would provide that the Department of Corporations would have regulatory jurisdiction over the lending and repossessing activities of buy-here-pay-here automobile dealers, as specified.

This bill would govern the terms and conditions of contracts entered into by a buy-here-pay-here automobile dealer and the rights of the parties, including, but not limited to, requiring a notice to a buyer-borrower of specified rights under the contract.

(2) Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies, as defined, and their employees by the Bureau of Security and Investigative Services within the Department of Consumer Affairs.

This bill would impose additional requirements on a buy-here-pay-here automobile dealer seeking to repossess a vehicle, including, but not limited to, prohibiting a dealer from commencing repossession proceedings due to failure to make a scheduled loan payment prior to the 11th day following the day on which that payment was due, requiring a dealer to hire a licensed repossession agency to repossess the vehicle on the dealer’s behalf, and prohibiting the dealer from charging the buyer-borrower a fee exceeding \$500 for the dealer’s costs in connection with the repossession. The bill would also establish a cap on interest rates that could be charged under a conditional sale or lease contract and require a buy-here-pay-here automobile dealer to allow a buyer-borrower 45 days to repay any penalties, fees, and other

charges imposed by the dealer on the buyer-borrower in connection with past due payments that have been brought current.

(3) Because this bill would expand the scope of a crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1b (commencing with Section 18500)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 1b. BUY-HERE-PAY-HERE AUTOMOBILE DEALERS
6 ACT

7
8 18500. This chapter shall be known, and may be cited, as the
9 Buy-Here-Pay-Here Automobile Dealers Act.

10 18501. As used in this chapter:

11 (a) "Dealer of vehicles" is one within the meaning of Section
12 11701 of the Vehicle Code, subject to the provisions of Article 1
13 (commencing with Section 11700) of Chapter 4 of Division 5 of
14 the Vehicle Code.

15 (b) "Conditional sale contract" is one within the meaning of
16 subdivision (a) of Section 2981 of the Civil Code, subject to the
17 provisions of Chapter 2b (commencing with Section 2981) of Title
18 14 of Part 4 of Division 3 of the Civil Code.

19 (c) "Lease contract" is one within the meaning of subdivision
20 (d) of Section 2985.7 of the Civil Code, subject to the provisions
21 of Chapter 2d (commencing with Section 2985.7) of Title 14 of
22 Part 4 of Division 3 of the Civil Code.

23 (d) "Buyer-borrower" means a person who enters into a
24 conditional sale contract or lease contract with a buy-here-pay-here
25 automobile dealer.

1 (e) “Licensed repossession agency” means a “repossession
2 agency” as defined in Section 7500.2 that is licensed pursuant to
3 the Collateral Recovery Act (Chapter 11 (commencing with Section
4 7500) of Division 3).

5 18502. (a) “Buy-here-pay-here automobile dealer” means a
6 seller who does all of the following:

7 (1) Enters into conditional sale or lease contracts.

8 (2) Does not routinely assign the conditional sale contracts or
9 lease contracts to an unaffiliated third-party finance or leasing
10 source.

11 (3) Collects payments on or otherwise services conditional sale
12 contracts or lease contracts.

13 (b) Notwithstanding subdivision (a), a seller is not a
14 buy-here-pay-here automobile dealer if the seller does both of the
15 following:

16 (1) Certifies 100 percent of the seller’s vehicles pursuant to
17 Section 11713.18 of the Vehicle Code.

18 (2) Maintains an on-site service and repair facility that is
19 licensed by the Bureau of Automotive Repair and employs a
20 minimum of five master automobile technicians as certified by the
21 National Institute for Automotive Service Excellence.

22 18503. (a) Notwithstanding Section 22054 of the Financial
23 Code or any other law, and except as otherwise expressly provided
24 in this chapter, a buy-here-pay-here automobile dealer shall not
25 do business in California unless licensed by the Department of
26 Corporations pursuant to the California Finance Lenders Law
27 (Division 9 (commencing with Section 22000) of the Financial
28 Code).

29 (b) A dealer of vehicles shall obtain a California Finance
30 Lenders Law license no later than six months following the date
31 on which it meets the definition of a buy-here-pay-here automobile
32 dealer, pursuant to the calculations required under Section 18502.

33 (c) The Department of Corporations shall have regulatory
34 jurisdiction, limited to lending and repossessing activities, over
35 buy-here-pay-here automobile dealers pursuant to this chapter and
36 the California Finance Lenders Law.

37 18504. (a) Notwithstanding Section 18502 or any other law,
38 a buy-here-pay-here automobile dealer shall be exempt from the
39 provisions of Sections 22320, 22320.5, and 22330 of the Financial
40 Code.

(b) Notwithstanding Section 22250 of the Financial Code, a conditional sale contract or a lease contract entered into by a buy-here-pay-here automobile dealer shall be subject to ~~the provisions referenced in Section 22250~~ *Sections 22154, 22155, 22201, 22202, 22300, 22305, 22306, 22307, 22309, 22313, 22314, 22315, 22320.5, 22322, 22323, 22325, 22326, 22327, 22334, 22400, 22751, and 22752* of the Financial Code.

(c) Notwithstanding any other law, the annual percentage rate charged to a buyer-borrower pursuant to a conditional sale contract or lease contract with a buy-here-pay-here automobile dealer shall not exceed the federal funds rate in effect at the time the contract was executed plus an additional 17 percent.

18505. (a) In lieu of the notice required by subdivision (h) of Section 2982 of the Civil Code, a conditional sale contract or lease contract entered into by a buy-here-pay-here automobile dealer shall include the following notice, in at least eight-point boldface type:

“If you have a complaint concerning this buy-here-pay-here automobile dealer or the contract, you should try to resolve it with the dealer. Complaints concerning unfair or deceptive practices or methods by the dealer may be referred to the city attorney, the district attorney, an investigator for the Department of Motor Vehicles, or an investigator for the Department of Corporations, or any combination thereof.

After this contract is signed, the dealer may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the dealer to make a unilateral change.

I have read and understand the terms of this notice.

Borrower’s Signature”

(b) The contract shall not be binding unless the buyer-borrower has acknowledged in writing that he or she has read and understands the notice required by subdivision (a).

18506. (a) A buy-here-pay-here automobile dealer shall be prohibited from commencing repossession of a vehicle subject to a conditional sale contract or lease contract due to the

1 buyer-borrower's failure to make a scheduled payment prior to
2 the 11th day following the date on which that payment was due.

3 (b) Following commencement of repossession proceedings
4 against a buyer-borrower for delinquent payments under a
5 conditional sale contract or lease contract, if the buyer-borrower
6 pays the delinquent amount in full, the buyer-borrower shall be
7 entitled for 45 days thereafter to pay the buy-here-pay-here
8 automobile dealer the amount of any delinquency charges, penalty
9 interest, and fees arising out of the delinquency and commencement
10 of repossession proceedings.

11 (c) A buy-here-pay-here automobile dealer shall not do either
12 of the following:

13 (1) Physically repossess a vehicle other than through engaging
14 the services of a licensed repossession agency.

15 (2) Charge a buyer-borrower an amount exceeding five hundred
16 dollars (\$500) in fees or charges resulting from the commencement
17 by the buy-here-pay-here automobile dealer of any action to
18 repossess a vehicle.

19 (d) The provisions of subdivisions (a), (b), and (c) shall be
20 included in the terms and conditions of a conditional sale contract
21 pursuant to Section 2981.9 of, or lease contract pursuant to Section
22 2985.8 of, the Civil Code.

23 SEC. 2. Section 22054 of the Financial Code is amended to
24 read:

25 22054. Except as otherwise provided in Chapter 1b
26 (commencing with Section 18500) of Division 8 of the Business
27 and Professions Code, this division does not apply to bona fide
28 conditional contracts of sale involving the disposition of personal
29 property when these forms of sales agreements are not used for
30 the purpose of evading this division.

31 SEC. 3. In enacting Section 1 of this act, it is not the intent of
32 the Legislature to affect or limit existing legal rights, remedies, or
33 claims available under current law.

34 SEC. 4. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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